IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 649 OF 2003

IN

SUMMARY SUIT NO. 3111 OF 2001

Mr.Harshal D. Shah .. Plaintiff

versus

Mrs.Geeta wd/o Mahesh Kantawala & ors.. Defendants

...

Mrs.Neela A. Dholakia for the plaintiff.

Mr.P.D. Rao for the defendants.

CORAM : D.G. KARNIK,J.

DATED : 13th April 2005.

P.C.:

1. Heard the learned counsel for the parties.

2. Summons for Judgement is taken out by the plaintiff in a suit for recovery of the money due on an promissory note. The promissory note was executed by Mahesh Kantawala and has died prior to the institution of the suit and his legal representatives

are sued in the capacity as heirs.

3. By filing an affidavit in reply, the defendants have denied that the deceased Mahesh Kantawala executed the promissory note and have denied the signature of the deceased on the promissory note. In the circumstances, plaintiff would be required to prove at trial that the signature of the promissory note is that of Mahesh. Furthermore, plaintiff would be required to prove that the defendants have inherited any property of Mahesh in order to fasten any liability on them. The suit has been instituted after the expiry of the period of three years from the date of the promissory note and hence, issue of limitation also gives rise to a triable issue.

4. In the circumstances, the defendants are granted unconditional leave to defend the suit. Suit shall stand transferred to the list of commercial causes. The defendant to file written statement within a period of four weeks.

D.G. KARNIK, J